

HOUSE BILL 2215

By Odom

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 4, Part 1; Title 9, Chapter 4, Part 55; Title 39; Title 43, Chapter 19; Title 43, Chapter 1; Title 47, Chapter 18; Title 50; Title 57, Chapter 5; Title 67 and Title 68, Chapter 1, relative to regulation of tobacco and tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding the following language as a new part:

Section 68-1-2401. This part shall be known and may be cited as the "Smoke Free Tennessee Act of 2007".

Section 68-1-2402. As used in this part, unless the context otherwise requires:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages or beer for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets;

(2) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs;

(3) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a not-for-profit entity;

(4) “Employer” means a person, business, partnership, association, corporation, including a municipality, trust, government entity, or not-for-profit entity that employs the services of one (1) or more individual persons;

(5) “Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling;

(6) “Medical facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aged or chronically ill, laboratories, and any other facilities licensed pursuant to title 68, and offices of any medical professional licensed pursuant to title 63. This definition includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within medical facilities or medical offices;

(7) “Municipality” includes an incorporated city, county and metropolitan government;

(8) “Place of employment” means an area under the control of a public or private employer in which two (2) or more individuals perform any type of a service for consideration of payment under any type of employment relationship. Place of employment includes any location where two (2) or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a place of employment include, but are not limited to, public conveyances, taxi cabs, limousines, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways,

museums, libraries, bowling establishments, employee medical facilities, conference rooms, meeting rooms, classrooms, rooms or areas containing photocopying equipment or other office equipment used in common, vehicles owned or leased by an employer, government-owned vehicles, or any similar place of employment. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or medical facility. A private vehicle is not a “place of employment” unless it is driven by a person employed by the individual who owns the vehicle;

(9) “Private club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages or beer incidental to its operation; the affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting; the organization has established bylaws and/or a constitution to govern its activities; and the organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501;

(10) “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, medical facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a “public

place” when being used for a function to which the general public is invited. A private residence is not a “public place” unless it is used as a child care, adult day care, or medical facility;

(11) “Restaurant” means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which give or offer for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” includes a bar area within the restaurant;

(12) “Service line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(13) “Shopping mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(14) “Smoking” means inhaling, exhaling, burning, carrying or otherwise possessing any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; and

(15) “Sports arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 68-1-2403. All enclosed areas, including buildings and vehicles owned, leased, or operated by employers shall be subject to the provisions of this part.

Section 68-1-2404. Beginning on December 31, 2007, smoking is prohibited in all enclosed public places within this state including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses patronized by the public, including but not limited to, banks, financial institutions, laundromats, professional offices, and retail service establishments;
- (3) Bars;
- (4) Child care and adult day care facilities;
- (5) Convention facilities;
- (6) Educational facilities, both public and private;
- (7) Elevators;
- (8) Medical facilities;
- (9) Hotels and motels;
- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (11) Polling places;
- (12) Private clubs when being used for a function to which the general public is invited;
- (13) Public transportation facilities, including railroads, buses, taxicabs and limousines, and ticket, boarding, and waiting areas of public transit depots;
- (14) Restaurants;
- (15) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(16) Retail stores;

(17) Rooms, chambers, places of meeting or public assembly, including public and private school buildings;

(18) Service lines;

(19) Shopping malls;

(20) Sports arenas, including enclosed places in outdoor arenas; and

(21) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Section 68-1-2405.

(a) Beginning on December 31, 2007, smoking is prohibited in all enclosed areas within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(b) This prohibition on smoking shall be communicated by all existing employers to all existing employees prior to December 31, 2007, and to all prospective employees upon their application for employment. All new employers shall communicate this prohibition on smoking to all prospective employees upon their application for employment.

Section 68-1-2406. Beginning on December 31, 2007, smoking is prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

Section 68-1-2407. Beginning on December 31, 2007, smoking is prohibited within a distance of twenty (20) feet outside entrances, operable windows, and

ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

Section 68-1-2408. Notwithstanding any other provision of this part to the contrary, the following areas shall be exempt from the provisions of §§ 68-1-2405, 68-1-2406 and 68-1-2407:

(1) Private residences; provided that, in accordance with § 63-1-2404, smoking is prohibited in all private residences used as a childcare, adult day care, or medical facility;

(2) Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this part; and

(3) Outdoor areas of places of employment except those covered by the provisions of §§ 68-1-2406 and 68-1-2407.

Section 68-1-2409. Notwithstanding any other provision of this part to the contrary, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking is prohibited in any place in which a sign conforming to the requirements of § 68-1-2410 is posted.

Section 68-1-2410.

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this part, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this part shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this part by the owner, operator, manager, or other person having control of the area.

Section 68-1-2411.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this act or reports or attempts to bring a legal action for a violation of this part.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 68-1-2412.

(a) This part shall be enforced by department of health with respect to the prohibition against smoking in a public place and by the department of labor and workforce development with respect to the prohibition against smoking in places of employment.

(b) Notice of the provisions of this part shall be given to all applicants for a business license pursuant to Tennessee Code Annotated, title 67, chapter 4, part 7.

(c) Any citizen who desires to register a complaint under this part may initiate such complaint with either department of health or the department of labor and workforce development, as appropriate. The departments shall develop a

uniform complaint form to be used by any citizen to report a violation of this part. Such form shall be posted on the website of each department with necessary instructions for filing. The departments are encouraged to develop a web-based application for filing such complaints.

(d) During any mandated inspection of an establishment otherwise provided by law, an inspector shall inspect for compliance with this part.

(e) An owner, manager, operator, or employee of an establishment regulated by this part shall inform persons violating this part of the appropriate provisions thereof.

(f) Notwithstanding any other provision of this part, an employee or private citizen may bring legal action to enforce this part.

(g) In addition to the remedies provided by this part, the commissioner of the department of health or the department of labor and workforce development, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this part may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 68-1-2413.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this part shall be subject to a civil fine not exceeding fifty dollars (\$50.00).

(b) In addition to any criminal penalties imposed by law, a person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this part shall be subject to a civil fine:

(1) Not exceeding one hundred dollars (\$100) for one (1) violation of this part in any twelve (12) month period;

(2) Not exceeding two hundred dollars (\$200) for a second violation of this part within any twelve (12) month period; or

(3) Not exceeding five hundred dollars (\$500) for each additional violation of this part within any twelve (12) month period.

(c) In addition to the fines established by this section, a knowing violation of this part by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a knowing violation of this part occurs shall be considered a separate and distinct violation.

Section 68-1-2414. The department of health in conjunction with the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this part to citizens affected by it, and to guide owners, operators, and managers of places of employment in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this part. The departments are encouraged to post any such information on the website of each department.

Section 68-1-2415. The commissioners of the departments of health and labor and workforce development shall annually request other governmental and educational agencies within the state to establish local operating procedures in cooperation and compliance with this part.

Section 68-1-2416.

(a) This part shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(b) The provisions of this part shall not be construed to amend the provisions of title 39, chapter 17, part 16.

(c) The penalties imposed by the provisions of this part shall be in addition to and supplemental to any other penalties imposed by law.

Section 68-1-2417. This part shall be liberally construed so as to further its purposes.

SECTION 2. Tennessee Code Annotated, Title 43, Chapter 19, is amended by adding the following language as a new part:

Section 43-19-501. This part shall be known and may be cited as the "Tennessee Tobacco Retailers Act of 2007".

Section 43-19-502. As used in this part, unless the context otherwise requires,

(1) "Board" or "tobacco board" means the same board, or legislative body, authorized to issue permits for the retail sale of beer in a county or city;

(2) "Permit" or "tobacco retailer permit" means a permit to sell tobacco products at retail issued to a tobacco retailer by the board in accordance with the provisions of this part;

(3) "Person" means any individual, firm, fiduciary, partnership, joint-stock company, corporation, trust, or association;

(4) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid;

(5) "Tobacco product" means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes, cheroots, beedies, bidis, chewing tobacco, dipping tobacco and tobacco snuff; and

(6) "Tobacco retailer" means any person that in any way sells, or makes available for sale, tobacco or tobacco products directly or indirectly to the ultimate consumer.

Section 43-19-503.

(a)

(1) It is an offense to operate any business as a tobacco retailer without a valid tobacco retailer permit issued by the tobacco board of the county or city where such business is located under the authority herein delegated to counties and cities.

(2) A violation of this subdivision (1) is a Class A misdemeanor.

(b) Permits shall be issued to the person who is the owner of the business engaged as a tobacco retailer.

(c) A permit shall be valid:

(1) Only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(2) Only for a single location and cannot be transferred to another location; and

(3) Only for a business operating under the name identified in the permit application.

(d) A permit holder shall return a permit to the board that issued it within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

Section 43-19-504.

(a)

(1) Each applicant for a tobacco retailer permit required by § 43-19-503 shall be required to pay a nonrefundable application fee of one hundred dollars (\$100) to the board of the county or city in which the applicant's place of business is located.

(2) Permits issued pursuant to this part shall be valid for one (1) calendar year and shall be renewable annually. The annual fee for a permit issued pursuant to this section shall be set by the board but shall not exceed fifty dollars (\$50.00). No fee required pursuant to this subsection shall be pro rated for a partial calendar year.

(b)

(1) An application shall be filed with the board of a city if such business is located within such city. If such city does not have a board, such application shall be filed with the county board. If such county does not have a board, such application shall be filed with the county legislative body.

(2) An application shall be filed with the board of a county if such business is located in an unincorporated area. If such county does not

have a board, such application shall be filed with the county legislative body.

(c)

(1) Permits issued pursuant to this part shall be conspicuously posted within ten (10) feet of the main entrance, or main cash register, at the tobacco retailer's place of business.

(2) A violation of this subsection is a Class C misdemeanor.

(3) In addition to the criminal penalty provided for in this subsection, a violation of this subsection is grounds for suspension or revocation of such tobacco retailer's tobacco retailer permit or imposition of a civil penalty, or any combination of suspension, revocation or penalty, as otherwise provided by this part.

Section 43-19-505.

(a) In order to receive a permit, and upon each renewal thereof, an applicant must establish that:

(1) No sale shall be made to minors;

(2) No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant has been convicted of a violation of this part or any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance, or the provisions of title 39, chapter 15, part 4 relative to smoking paraphernalia, or the provisions of title 39, chapter 17, part 15, or the provisions of title 39, chapter 17, part 16, or the provisions of §§

39-17-602, 39-17-604, 39-17-605 or 39-17-606, or any crime involving moral turpitude within the past ten (10) years; and

(3) No person employed by the applicant in such sale of tobacco products has been convicted of a violation of this part or any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the provisions of title 39, chapter 15, part 4 relative to smoking paraphernalia, or the provisions of title 39, chapter 17, part 15, or the provisions of title 39, chapter 17, part 16, or the provisions of §§ 39-17-602, 39-17-604, 39-17-605 or 39-17-606, or any crime involving moral turpitude within the past ten (10) years.

(b) An applicant shall disclose the following information in the application:

(1) Name of the applicant;

(2) Name of applicant's business;

(3) Location of business by street address, city and county;

(4) Persons, firms, corporations, joint-stock companies, syndicates, or associations having at least a five percent (5%) ownership interest in the applicant;

(5) Identity and address of a representative to receive annual renewal notices and any other communication from the board;

(6) That no person, firm, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant nor any person to be employed in the sale of tobacco products

has been convicted of any violation of this part or of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the provisions of title 39, chapter 15, part 4 relative to smoking paraphernalia, or the provisions of title 39, chapter 17, part 15, or the provisions of title 39, chapter 17, part 16, or the provisions of §§ 39-17-602, 39-17-604, 39-17-605 or 39-17-606, or any crime involving moral turpitude within the past ten (10) years; and

(7) Such other relevant information as may be required by the board.

(c) An applicant or permit holder shall be required to amend or supplement its application promptly if a change in circumstances affects the responses provided in its application for a permit or renewal.

(d) A board may utilize the same application for the initial application for a permit and renewal or may provide a short-form for renewal.

(e) Any applicant making a false statement in an application for a permit or renewal shall forfeit such applicant's permit and shall not be eligible to receive a permit in such person's name for a period of ten (10) years and shall not be eligible to have an ownership interest, as described in subdivision (b)(6) of this section, in an applicant for ten (10) years.

(f) Any applicant seeking a permit, or renewal of a permit, under this part and who complies with the conditions and provisions of this part shall have issued to such applicant the necessary permit, and in the event the permit is

refused, the applicant shall be entitled to a hearing on the application for the issuance, or renewal, of such permit. The refusal to grant a permit, or the refusal to grant a hearing upon a person's application for a permit, may be reviewed by the circuit or chancery court in the manner as authorized under § 43-19-506.

(g) Before any board shall issue a permit under this part, it may cause to be published in a newspaper of general circulation a notice containing the following:

- (1) The name of the applicant;
- (2) The address of the location for such permit and the date; and
- (3) The time of the board's meeting at which such application shall be considered.

All such meetings shall be public hearings for the purpose of hearing the statement of any person or such person's attorney on any application for a permit.

(h) Where a permit has been refused three (3) times, the applicant shall not be allowed to apply again for a permit on the same premises until after the expiration of one (1) year from the date of the third refusal. Nothing in this subsection (h) shall be construed as prohibiting, or in any manner limiting, the right of an applicant to request review of any refusal made by a board by the circuit or chancery court in the manner as authorized under § 43-19-506.

(i) A county legislative body may impose training or certification restrictions or requirements on employees of a permit holder.

(j)

- (1) No tobacco retailer, or an employee of a tobacco retailer, shall sell any tobacco product to any person under eighteen (18) years of age.

(2) In addition to any criminal penalty provide by law, a violation of this subsection is grounds for suspension or revocation of such tobacco retailer's tobacco retailer permit or imposition of a civil penalty, or any combination of suspension, revocation or penalty, as otherwise provided by this part.

Section 43-19-506.

(a)

(1) Tobacco retailer permits issued under this part by a board may be revoked or suspended by such board.

(2)

(A) A board may, at the time it imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each offense of making or permitting to be made any sales to minors or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to subsection (d).

(B) A city or county may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subdivision

(a)(2)(A), by a permit holder charged with a violation of this chapter, which payment shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty the city or county may impose.

(b) No permit shall be revoked on the grounds the operator or any person working for the operator sells tobacco products to a minor over sixteen (16) years of age, if such minor exhibits proof of age, false or otherwise, indicating the minor's age to be eighteen (18) years of age or older, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars (\$1,500) may be imposed pursuant to subdivision (a)(2). However, this shall not be construed in any way to relieve the minor from liability for making such illegal purchase as otherwise provided by law.

(c) Such revocation, suspension, or imposition of civil penalty may be made for any violation of any provision of this part.

(d) The action of such board in connection with the issuance of any order of any kind, including the revocation or suspension of a permit, imposition of a civil penalty or the refusal to grant a permit under this part, may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued.

(e) Immediately upon the grant of the writ of certiorari, the board revoking or suspending a permit or imposing a civil penalty shall cause to be made,

certified and forwarded to the court a complete transcript of the proceedings in the cause.

(f) The provisions of this section shall be the sole remedy and exclusive method of review of any action or order that may have been issued by any board authorized under this part, including the refusal or failure to grant any permit or the imposition of a civil penalty. The provisions of the Tennessee Rules of Civil Procedure shall be applicable in connection with any such review. Any party dissatisfied with the decree of the court may, upon giving bond as required in other cases, appeal, where the cause shall be heard upon the transcript of the records from the circuit court.

(g) A judge of any court of record shall have the authority to supersede, stay or enjoin any order of a board revoking, suspending or imposing a civil penalty made under the authority of this part for good cause shown on part of the petitioning party thereof. No circuit or chancery judge shall have the authority to grant any such extraordinary writ except the judge of a court of record to which the petition for certiorari is addressed.

(h) If a final judgment is entered by the trial court superseding the revocation or suspension order or order imposing a civil penalty, and the cause is appealed by the board, the final judgment of the trial court shall remain in force until final appellate disposition of the cause.

(i) The remedy provided by this section shall be the only method of reviewing orders of a board revoking or suspending permits issued under this part or imposing civil penalties.

(j) Where a permit is revoked, no new permit shall be issued to permit the sale of tobacco products on the same premises until after the expiration of one

(1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the permit or any family member who could inherit from such individual under the statute of intestate succession or a person otherwise prohibited pursuant to the provisions of this part.

SECTION 3. Tennessee Code Annotated, Title 57, Chapter 5, Part 1, is amended by adding the following language as a new section:

Section 57-5-113. In addition to the duties imposed by this chapter, county and city beer boards shall regulate the provisions of title 43, chapter 19, part 5 concerning tobacco retailers. In the case of a city that has no beer board, the county beer board shall regulate the provisions of title 43, chapter 19, part 5 concerning tobacco retailers. In the case of a county that has no beer board, the county legislative body shall regulate the provisions of title 43, chapter 19, part 5 concerning tobacco retailers. Any such board, or the county legislative body, if no board is formed, is authorized to conduct investigations into violations by tobacco retailers, and their employees, of the provisions of title 39, chapter 15, part 4, title 39, chapter 17, part 15, title 39, chapter 17, part 16, and title 43, chapter 19, part 5, jointly with local, state or federal law enforcement or independently by use of undercover investigators or in a manner consistent with the provisions of § 39-15-413.

SECTION 4. Tennessee Code Annotated, Section 39-15-413(a)(1), is amended by deleting the language "to purchase smoking material, smoking paraphernalia, any smokeless tobacco product" and by substituting instead the language "to purchase any tobacco product, smoking material, smoking paraphernalia, any smokeless tobacco product".

SECTION 5. Tennessee Code Annotated, Section 39-17-1502, is amended by deleting the language ", limiting the sale of tobacco products through vending machines," and by substituting instead the language ", prohibiting the sale of tobacco products through vending machines,".

SECTION 6. Tennessee Code Annotated, Title 39, Chapter 17, Part 15, is amended by deleting § 39-17-1503 in its entirety and by substituting instead the following language:

Section 39-17-1503. As used in this part, unless the context otherwise requires:

(1) "Beedies" or "bidis" means a product containing tobacco that is wrapped in temburni leaf (*dispyros melanoxydon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as beedies or bidis. For purposes of this chapter, beedies or bidis shall be considered a tobacco product;

(2) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association;

(3) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Except in the case of distribution by mail, the distributor shall obtain a statement from the addressee that the addressee is eighteen (18) years of age or older;

(4) "Public place" means any public street, sidewalk or park, or any area open to the general public in any publicly owned or operated building;

(5) "Sample" means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the product;

(6) "Sampling" means the distribution of samples to members of the general public in a public place; and

(7) "Tobacco product" means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes, bidis, chewing tobacco, dipping tobacco and tobacco snuff.

SECTION 7. Tennessee Code Annotated, Section 39-17-1506, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco products required to be posted or maintained in any store that sells tobacco products at retail; provided that any person operating a business that sells tobacco products at retail shall comply with the permit posting requirements of title 43, chapter 19, part 5.

SECTION 8. Tennessee Code Annotated, Title 39, Chapter 17, Part 15, is amended by deleting § 39-17-1507 in its entirety and by substituting instead the following:

Section 39-17-1507.

(a) It is an offense for any person to sell tobacco products through a vending machine.

(b) Vending machines used in violation of this section are declared contraband and are subject to seizure and forfeiture in the same manner as is provided by law for the seizure and forfeiture of other contraband items.

SECTION 9. Tennessee Code Annotated, Title 39, Chapter 17, Part 15, is amended by deleting § 39-17-1509 in its entirety and by substituting instead the following language:

Section 39-17-1509. The department of agriculture shall prepare annually for submission by the governor to the secretary of the United States department of health

and human services the report required by Section 1926 of subpart I of Part B of Title XIX of the Public Health Service Act. The department shall prepare for submission to the general assembly and the public an annual report describing in detail law enforcement efforts under this part, title 39, chapter 15, part 4 and title 43, chapter 19, part 5.

SECTION 10. Tennessee Code Annotated, Title 39, Chapter 17, Part 15, is amended by deleting § 39-17-1510 in its entirety and by substituting instead the following:

Section 39-17-1510.

- (a) A violation of § 39-17-1504(a) or (b) is a Class B misdemeanor.
- (b) A violation of § 39-17-1504(c) or (d) is a Class C misdemeanor.
- (c) A violation of § 39-17-1506 is a Class C misdemeanor.
- (d) A violation of § 39-17-1507 is a Class A misdemeanor.
- (e) A violation of § 39-17-1508 is a Class C misdemeanor.
- (f) Any law enforcement officer may issue a citation regarding a violation of this part.
- (g) It is an affirmative defense to prosecution under § 39-17-1504(a), which must be proven by a preponderance of the evidence, that a person demanded, was shown, and reasonably relied upon proof of age.
- (h) It is an affirmative defense to prosecution under § 39-17-1504(d), which must be proven by a preponderance of the evidence, that a person obtained a statement from the addressee that the addressee is at least eighteen (18) years of age and that such person informed the addressee that Tennessee law prohibits the distribution of any tobacco products, as defined by this part, to a person under eighteen (18) years of age.

SECTION 11. Tennessee Code Annotated, Section 67-4-506(a)(1), is amended by deleting the following language:

, except that the percentage shall be two and one-half percent (2.5%) of the gross receipts of all tobacco items from the machines,

SECTION 12. Tennessee Code Annotated, Section 67-4-1001(15), is amended by deleting the language "tobacco vending machine,".

SECTION 13. Tennessee Code Annotated, Section 67-4-1001, is amended by deleting item (21) in its entirety.

SECTION 14. Tennessee Code Annotated, Section 67-4-1019(d)(2), is amended by deleting the language ", vending machines".

SECTION 15. Tennessee Code Annotated, Section 67-4-1020, is amended by deleting subsections (c) and (f) in their entirety.

SECTION 16. Tennessee Code Annotated, Section 67-4-1021, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Pending any proceeding to recover any tobacco product, vehicle, aircraft or boat seized under this part, the commissioner may order delivery of such item to any claimant who shall establish the claimant's right to immediate possession of the tobacco product, vehicle, aircraft or boat, and who shall execute, with one (1) or more sureties approved by the commissioner, and deliver to the commissioner, a bond in favor of the state of Tennessee for the payment of a sum double the appraised value of the tobacco product, vehicle, aircraft or boat as of the time of the hearing; and conditioned further, that if the tobacco product, vehicle, aircraft or boat is not returned at the time of hearing, the bond shall stand in lieu of and be forfeited in the same manner as such tobacco product, vehicle, aircraft or boat.

SECTION 17. Tennessee Code Annotated, Section 67-4-1021(m)(1), is amended by deleting the language "vending machine,".

SECTION 18. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following language as a new subdivision:

(_) "Moist snuff" means any finely cut, ground or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground or powdered tobacco that is intended to be placed in the nasal cavity;

SECTION 19. Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language "ten (10) mills on each cigarette" and by substituting instead the language "two and five hundredths cents (2.05¢) on each cigarette".

SECTION 20. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by deleting § 67-4-1005 in its entirety and by substituting instead the following:

Section 67-4-1005. An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of all other tobacco products, at the following rates:

(1) In the case of moist snuff, thirty-five cents (35¢) per ounce of moist snuff, and a proportionate tax at the like rate on all fractional parts of an ounce thereof, computed on the net weight of the moist snuff in ounces listed by the manufacturer; and

(2) In the case of all other tobacco products, except moist snuff, including, but not limited to, cigars, cheroots, stogies, beedies, bidis and manufactured tobacco whether made of tobacco or any substitute for tobacco, fifteen percent (15%) of the wholesale cost price.

SECTION 21. Tennessee Code Annotated, Section 67-4-1025(a), is amended by deleting the language "All of the taxes on tobacco products collected under this part shall be applied in the following manner:" and by substituting instead the following language:

Except as provided in subsection (d), all of the taxes on tobacco products collected under this part shall be applied in the following manner:

SECTION 22. Tennessee Code Annotated, Section 67-4-1025(b), is amended by deleting the language "The revenue from the tax on cigarettes shall be used exclusively for public education, grades one through twelve (1-12)," and by substituting instead the following language:

Except as provided in subsection (d), the revenue from the tax on cigarettes shall be used exclusively for public education, grades one through twelve (1-12),

SECTION 23. Tennessee Code Annotated, Section 67-4-1025, is amended by adding the following language as a new subsection:

(d) Revenue collected from the increase in taxes on tobacco products generated by the provisions of Sections 19 and 20 of this act shall be applied as follows:

(1) Nine percent (9%) of the amount so collected shall be allocated to the department of agriculture for grants to tobacco farmers;

(2) Twelve percent (12%) of the amount so collected shall be allocated to general fund; provided that such moneys shall be used exclusively for community enhancements and shall not be expended unless appropriated for such purpose in the general appropriations act;

(3) Seventy-five and one-half percent (75.5%) of the amount so collected shall be allocated to the general state school fund; provided that such moneys shall be distributed outside of the basic education program funding formula and shall be used exclusively for at-risk and English language learner programs,

notwithstanding the provisions of title 49, chapter 3 to the contrary. Such funds shall be as appropriated by the general appropriations act in accordance with the provisions of this subdivision; and

(4) Three and one-half percent (3.5%) of the amount so collected shall be allocated to the department of health for home and community-based care programs for the elderly as otherwise established by law and appropriated in the general appropriations act.

SECTION 24. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new section to be designated as follows:

Section 67-4-1031.

(a) As used in this section, “nonparticipating manufacturer” has the same meaning as ascribed in § 67-4-2601(6).

(b)

(1) As used in this section, “cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to

be offered to, or purchased by, consumers as a cigarette described in subdivision (b)(1)(A);

(2) "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For the purposes of this subsection (b)," 0.09 ounces of "roll-your-own" tobacco constitutes one (1) individual "cigarette."

(c) Every nonparticipating manufacturer shall pay to the department for exclusive state purposes an equity assessment, in addition to all other assessments, fees, or taxes, upon each package of nonparticipating manufacturer cigarettes. The rate of the equity assessment shall be twenty-five (25) mills on each cigarette. The department shall collect the equity assessment each month directly from the nonparticipating manufacturer based on information received by the department under subsections (e) and (f). Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax imposed by § 67-4-1002.

(d) The purposes of this equity assessment are:

(1) To prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering their cigarettes for sale substantially below the price of cigarettes of other manufacturers;

(2) To protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs and services funded in whole or in part by payments to the state under the

master settlement agreement, as defined in § 47-31-102 and to recoup settlement payment revenue lost to the state as a result of nonparticipating-manufacturer cigarette sales;

(3) To fund enforcement and administration of title 47, chapter 31, and title 67, chapter 4, part 26, related nonparticipating-manufacturer legislation, and the equity assessment imposed by this section, including reasonable administrative costs incurred by persons subject to subsection (f) by reason of the requirements of that subsection; and

(4) To fund other such purposes as the general assembly may determine.

(e) A nonparticipating manufacturer whose cigarettes are being offered for sale in this state on the effective date of this section shall pay the equity assessment imposed by this section within thirty (30) days after the effective date of this section. If cigarettes of a nonparticipating manufacturer are not being offered for sale in this state on the effective date of this section, then the nonparticipating manufacturer, before its cigarettes may begin to be offered for sale in this state, shall prepay the equity assessment imposed by this section for the number of cigarettes of the nonparticipating manufacturer that the department reasonably projects will be sold in the first calendar month in which cigarettes of the nonparticipating manufacturer are sold in this state. The prepayment amount shall be determined by multiplying twenty-five (25) mills times the number of cigarettes that the department reasonably projects that the nonparticipating manufacturer will sell in this state in that first calendar month, or fifty-thousand dollars (\$50,000), whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary

to determine the equity assessment payment amount and, in the case of prepayment, the commissioner shall establish procedures providing for reimbursement to nonparticipating manufacturers if actual sales are less than sales as projected by the department and for additional payment by nonparticipating manufacturers if actual sales are greater than sales as projected by the department.

(f) Persons authorized to affix stamps or stamp-alternatives shall file with the department a monthly report by the twentieth day of each month stating the number and denominations of stamps or stamp-alternatives affixed to individual packages of nonparticipating-manufacturer cigarettes, by manufacturer and brand family, sold by the person for each place of business in the preceding month. Persons failing to comply with this subsection shall be subject to the penalties specified in § 67-4-1016.

(g) Cigarettes of a nonparticipating manufacturer that has not paid the equity assessment imposed by this section shall be treated as cigarettes of a nonparticipating manufacturer that has not provided the certification required by § 67-4-2602(a), or any successor legislation, and shall be treated as tobacco products to which the required stamps has not been affixed and upon which the applicable tobacco taxes have not been paid and shall not be included in the directory specified in § 67-4-2602(b).

SECTION 25. The revenues received pursuant to the assessment levied by Section 24 of this act are hereby earmarked for the purpose of funding statewide health programs as may be provided in the general appropriation act.

SECTION 26. Tennessee Code Annotated, Title 43, Chapter 1, Part 1, is amended by adding the following language as a new section:

Section 43-1-114.

(a) The commissioner of agriculture is authorized to establish a grant program for tobacco farmers.

(b) Such program shall be funded with moneys allocated for such purpose pursuant to § 67-4-1025(d); provided that no funds shall be expended under the provisions of this section unless specifically appropriated for such purpose in the general appropriations act.

SECTION 27. Tennessee Code Annotated, Section 47-18-2002(1), is amended by deleting the language "cigarette vending machine".

SECTION 28. Tennessee Code Annotated, Title 4, Chapter 4, Part 1, is amended by deleting § 4-4-121 in its entirety and by substituting instead the following:

Section 4-4-121. Smoking shall be prohibited in all buildings that are owned or operated by the state of Tennessee. It is the intent of the general assembly that all buildings that are owned or operated by the state shall be completely smoke-free.

SECTION 29.

(a) The department of revenue is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of revenue is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 30.

(a) The department of health is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such

rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of health is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 31.

(a) The department of labor and workforce development is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of labor and workforce development is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 32.

(a) The department of agriculture is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of agriculture is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 33. No provision of this act shall be construed as prohibiting any activity otherwise authorized pursuant to the tobacco litigation master settlement agreement entered

into by Tennessee and certain other states, United States territories and possessions, and participating tobacco manufacturers, dated November 23, 1998.

SECTION 34. Tennessee Code Annotated, Title 39, Chapter 17, Part 15, is amended by deleting § 39-17-1551 in its entirety.

SECTION 35. The general assembly by enacting this act intends to preempt any other regulation of the area covered by this act. No political subdivision or agency may enact or enforce a law, ordinance, resolution or regulation that regulates or prohibits any conduct in any area covered by this act unless such regulation or prohibition is expressly authorized by the provisions of this act.

SECTION 36. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 37. For the purpose of promulgating rules and regulations, Sections 29, 30, 31 and 32 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 28 of this act shall take effect December 31, 2007, the public welfare requiring it. All other Sections of this act shall take effect July 1, 2007, the public welfare requiring it.